IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.938 OF 2002
IN
SUIT NO.6283 OF 1999

Pawankumar Pratapsingh Thakur Plaintiff

versus

Anilkumar Pratapsingh Thakur Defendant

and

Chagan Nagesh Muley Respondent

Mr.R.D.Sawant for plaintiff.

Mr.R.R.Mishra for defendant.

Mr.S.D.Mogre for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 24th June 2005

PC :

1. Plaintiff’s present suit is for partition upon declaration of his share in the estate of deceased. It is contended that one of the immovable properties being Room No.44 in a building known as "Jalimsingh Building" on the third floor situate at Chunam Lane, D.B.Marg, Mumbai, is in possession of the respondents and by present Notice of Motion the plaintiff claims

a relief that Receiver be appointed of that room and he be directed to hand over peaceful possession of this room to the Court Receiver.

2. It is contended that initially the suit was filed in the City Civil Court and the City Civil Court appointed Court Receiver in respect of the suit property. Later on the suit was transferred to this Court and the appointment of Court Receiver continued. Court Receiver had taken symbolic possession of the suit property on 15th April 1994.

3. The present respondent took out Chamber Summons No.1266 of 2001 claiming a relief that the act of the Court Receiver of putting seal and taking possession of this room is contrary to law. That Chamber Summons upon service being completed, was heard by learned Single Judge of this Court. It is pertinent to note that the plaintiff was heard by this Court on this Chamber Summons. By a reasoned order a learned Judge of this Court directed that the Court Receiver should remove his lock and seal on this room and put the respondent in occupation thereof. However, while granting this relief the learned Judge observed that it would be open for the

parties or the Court Receiver to seek appropriate directions from the Court.

4. Mr.Sawant appearing for the plaintiff states that pursuant to the liberty granted by learned Single Judge, present Notice of Motion is taken out.

5. In my view, in the light of authoritative pronouncement of Hon'ble Supreme Court in AIR-1997-SC-173 (Authority Leo Vs. Nandlal Balkrishna and others), it will not be possible to grant the relief as prayed in the Notice of Motion. The Supreme Court has observed that orders appointing Court Receiver in respect of immovable properties ought not be put an end to the rights of the parties and occupants. The Court Receiver does not have any higher right than that of the plaintiff. The Court Receiver cannot be called upon to dispossess persons in occupation when they are claiming tenancy rights in immovable properties. If the order on the Chamber Summons is perused, it is clear that the very act of the Court Receiver which was held to be illegal by this Court, is being sought to be repeated by the plaintiff. Observation of this Court to seek appropriate direction can by no

stretch of imagination be construed as seeking appointment of Court Receiver and dispossessing the respondent. The tenancy rights could be in dispute. It may be claimed by defendant and plaintiff that respondent is a trespasser but that claim has to be adjudicated independently and in substantive proceedings. The present Notice of Motion is not a remedy nor proceeding of that nature. I have no manner of doubt that as and when a substantive suit is filed or if permissible in law the present suit is appropriately amended it will always be open for the plaintiff and the defendant to seek appropriate reliefs and declarations against respondent. Leaving all such remedies and contentions in that behalf open, present Notice of Motion is disposed off.

6. Mr.Mogre for respondent states that respondent will not alienate, encumber, part with possession or create third party rights in respect of Room No.44 in his occupation. He states that the respondent is in occupation of the premises along with his family members. Respondent is present in the Court when this statement is made by Mr.Mogre. Respondent is permitted to deposit monthly rent/compensation in

respect of the premises with Court Receiver from January 2002 and such deposit would be without prejudice to the rights and contentions of the plaintiff, defendant as well as respondent. Rent/compensation from January 2002 shall be deposited within a period of eight weeks from today. Monthly rent/compensation for subsequent months shall, needless to state that, be deposited with the Court Receiver on 10th of every month. Notice of Motion disposed off.

(S.C.DHARMADHIKARI, J.)